Champion Motors (1975) Sdn Bhd v Tina Travel & Agencies Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1-12-124-95
ABDUL KADIR SULAIMAN J
22 NOVEMBER 1996

Contract *— Damages — Remoteness of — Seller's duty to purchaser under a contract of sale — Defect in title of goods sold — Whether loss suffered by purchaser was foreseeable*

Sale of goods *— Damages — Remoteness of — Seller's duty to purchaser under a contract of sale — Defect in title of goods sold — Whether loss suffered by purchaser was foreseeable*

The respondent ('the plaintiff') was a tourist operator and the registered owner of a motor bus ('the vehicle') which it had purchased from the appellant ('the defendant'). On 22 February 1984, the vehicle was sent to the Road Transport Department ('the RTD') for inspection purposes upon which the RTD detained the vehicle on the ground that the engine number supplied was found to be different from the particulars of it kept by the RTD. The plaintiff was charged in court for an offence under s 116(1) of the Road Traffic Ordinance 1958 for changing the engine of the vehicle without the authority of the RTD. The vehicle was detained for a total period of 73 days during which period the plaintiff hired a motor bus from a third party in order to carry on its business. Upon the return of the vehicle by the RTD to the plaintiff, it underwent repair works for which the plaintiff expended RM10,000. The plaintiff claimed against the defendant for the loss of use of the vehicle while it was in detention and for its depreciation.

Held, dismissing the appeal:

As the relationship was between the plaintiff as the buyer and the defendant as the seller in contract, and not with the third party assembler, the defendant owed a duty of care to the plaintiff to see that there was no defect in the title in the vehicle sold. In order to discharge the duty of care to the plaintiff, it was the responsibility of the defendant to ensure that the vehicle sold met with the specifications as contained in their contract of sale.

Further, the defendant knew the purpose for which the plaintiff bought the vehicle and that the vehicle required periodic inspections by the authorities and any particulars found at variance with the record kept by the authorities would cause injuries to the plaintiff as the owner of the vehicle. Hence, the loss suffered by the plaintiff was foreseeable and not too remote. Also, the plaintiff's claim was a claim for the loss of use of the vehicle and the costs of repairs done consequent upon the conduct of the defendant for expenses actually

incurred. A claim for expenses actually incurred could never be too remote (see pp 163G–I and 164B–C).

Obiter:

The plaintiff's claim could not be classified as a claim for economic loss as it was a claim for the loss of use of the vehicle and the costs of repairs done consequent upon the conduct of the defendant for expenses actually incurred (see p 164B).

[Bahasa Malaysia summary

Penentang ('plaintif') merupakan operator pelancongan dan tuan punya berdaftar sebuah motor bas ('kenderaan tersebut') yang ia telah beli daripada perayu ('defendan'). Pada 22 Februari 1984, kenderaan tersebut dihantar ke Jabatan Pengangkutan Jalan ('JPJ') untuk tujuan pemeriksaan yang mana JPJ telah menahan kenderaan tersebut atas alasan nombor enjin yang dibekalkan didapati berbeza daripada butir-butir mengenainya yang disimpan oleh JPJ. Plaintif dipertuduhkan di mahkamah atas kesalahan di bawah s 116(1) Ordinan Lalulintas Jalan 1958 kerana menukar enjin kenderaan tersebut tanpa kebenaran JPJ. Kenderaan tersebut telah ditahan untuk jangkamasa selama 73 hari dalam mana plaintif telah menyewa sebuah motor bas dari sebuah pihak ketiga supaya dapat meneruskan urusniaga. Apabila kenderaan tersebut dikembalikan oleh JPJ kepada plaintif, ia telah menjalani kerja pembaikan di mana plaintif telah membelanjakan RM10,000. Plaintif membuat tuntutan terhadap defendan untuk kehilangan penggunaan kenderaan tersebut semasa ia ditahan dan untuk kesusutan nilainya.

Diputuskan, menolak rayuan:

Oleh kerana perhubungan adalah di antara plaintif sebagai pembeli dan defendan sebagai penjual dalam kontrak, dan bukan dengan pihak ketiga, defendan mempunyai kewajipan berjaga-jaga kepada plaintif untuk menentukan bahawa tiada kecacatan dalam hakmilik kenderaan yang dijual. Bagi melepaskan kewajipan berjaga-jaga kepada plaintif, adalah tanggungjawab defendan untuk memastikan bahawa kenderaan yang dijual memenuhi spesifikasi seperti yang terkandung dalam kontrak jualan mereka.

Selanjutnya, defendan tahu akan tujuan plaintif membeli kenderaan tersebut dan bahawa kenderaan tersebut memerlukan pemeriksaan berkala oleh pihak-pihak berkuasa dan sebarang butir yang didapati bertentangan dengan rekod yang disimpan oleh pihak-pihak berkuasa akan menyebabkan kecederaan kepada plaintif sebagai pemunya kenderaan tersebut. Justeru itu, kerugian yang dialami oleh plaintif dapat dijangka dan tidak terlalu di luar dugaan. Juga, tuntutan plaintif adalah tuntutan untuk kehilangan penggunaan kenderaan tersebut dan kos membaiki yang dijalankan akibat daripada tindak-tanduk defendan untuk belanja yang benar-benar ditanggung.

Tuntutan untuk belanja yang benar-benar ditanggung tidak boleh dikatakan terlalu luar dugaan (lihat ms 163G–I dan 164B–C).

Obiter:

Tuntutan plaintif tidak boleh dikelaskan sebagai tuntutan untuk kerugian ekonomi sebab ia merupakan suatu tuntutan untuk kehilangan penggunaan kenderaan dan kos pembaikan yang telah dilakukan akibat daripada tindak-tanduk defendan untuk belanja yang benar-benar ditanggung (lihat ms 164B).]

Notes

For cases on damages, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1442–1494 and 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 642–648.

Case referred to

Kerajaan Malaysia lwn Cheah Foong Chiew & Lain-lain [1993] 2 MLJ 439 (refd)

Legislation referred to

Road Traffic Ordinance 1958 s 116(1)

Evelyn Khoo (*Azman Davidson & Co*) for the appellant.
Mohd Shah bin Hashim (*Avtar Singh* with him) (*Jaspal Singh & Mohd Shah*) for the respondent.

Cur Adv Vult

Abdul Kadir Sulaiman J: This is an appeal by the first defendant in the court below against the decision of the learned sessions judge allowing the claim of the plaintiff. For the purpose of this judgment, the appellant will be referred to as 'the defendant' and the respondent as 'the plaintiff'. On 15 August 1996, I heard the appeal and dismissed it with costs. I now provide my grounds for such a decision.

In the court below, the only issue for consideration by the judge in respect of the claim by the plaintiff for liquidated damages is whether the damages suffered by the plaintiff were too remote. According to the statement of agreed facts, which are material to the issue before the court, the plaintiff was the registered owner of a motor bus bearing Registration No WT 6805 ('the vehicle') which it purchased from the defendant on or about 15 December 1979. The vehicle was subsequently detained by the Road Transport Department in accordance with the provisions of the Road Traffic Ordinance 1958 (since repealed) for 73 days. It was also agreed by the parties that if the answer to the question posed is in the negative in that the damages as suffered by the plaintiff are not too remote, the plaintiff should succeed in its claim for special damages of RM53,000. The learned judge held that the damages suffered by the plaintiff was

forseeable because the defendant as the seller of the vehicle, is responsible to the plaintiff buyer to ascertain that the vehicle sold is in the order for the purpose it was sold to the plaintiff, and that the requirements of the relevant laws are being complied with.

The background leading to the claim as disclosed in the facts as found by the learned judge is as follows. The plaintiff is a tourist operator and the vehicle was bought for the purpose of transporting tourists in the course of its business. On 15 February 1984, the plaintiff mislaid the vehicle registration card issued in respect of the vehicle and required its replacement. It is the requirements of the law that before a new registration card could be issued, the vehicle would have to be sent to the Road Transport Department ('the RTD') for inspection. Upon the vehicle being sent to the RTD for the purpose of inspection on 22 February 1984, the RTD detained the vehicle on the ground that the engine number supplied was found to be different from the particulars kept by the RTD. The plaintiff was charged in court for an offence under s 116(1) of the Road Traffic Ordinance 1958 for changing the engine of the vehicle without the authority of the RTD. The detention was for a total period of 73 days. During the period of detention, the plaintiff hired a motor bus from a third party in order to carry on its business as a tourist operator. The rate for hire was RM600 per day. Upon the return of the vehicle by the RTD to the plaintiff, the vehicle needed to undergo repairs and was dirty. For that, the plaintiff spent RM10,000. Hence, the plaintiff claimed against the defendant for the loss of use of the vehicle while it was in detention, and for depreciation of the vehicle, with interest.

At the trial, no receipt was produced by the plaintiff to support the claim because the receipt was misplaced after a period of ten years. At the trial, the defendant did not offer any witness or document to rebut the facts and evidence given by the plaintiff. On the balance of probability, the learned judge found for the plaintiff as claimed.

Before me in this appeal, the learned counsel for the defendant submitted that there was no causation by the defendant resulting in the damage suffered by the plaintiff because the particulars of the engine number was supplied by the third party assembler of the vehicle. As such, the damage suffered by the plaintiff was too remote. In reply, the learned counsel for the plaintiff submitted that the relationship is between the plaintiff as the buyer and the defendant as the seller in contract and not with the third party assembler. As such, the defendant owes a duty of care to the plaintiff to see that there is no defect in the title in the vehicle sold. In order to discharge that duty of care to the plaintiff, it is the responsibility of the defendant to see that the vehicle sold met with the specifications as contained in their contract of sale. Also, the defendant knew the purpose for which the plaintiff bought the vehicle and the vehicle requires periodic inspections by the authorities and any particulars found at variance with the record kept by the authorities would cause injuries to the plaintiff as the owner of the vehicle. I accepted the submissions by the learned counsel for the plaintiff and held that the loss suffered by the plaintiff is foreseeable and therefore, not too remote.

The learned counsel for the defendant also submitted that the claim by the plaintiff is for economic loss. He quoted *Kerajaan Malaysia lwn Cheah Foong Chiew & Lain-lain* [1993] 2 MLJ 439, and many other authorities for saying that claim for economic loss is not recognized in Malaysia. Whilst that may be so, the claim of the plaintiff here cannot be classified as a claim for economic loss. It is a claim for the loss of use of the vehicle and the costs of repairs done consequent upon the conduct of the defendant. There was evidence that a substitute vehicle was hired by the plaintiff during the period of detention by the RTD in order to carry on its tourist business and repairs to the vehicle was carried out after it was released by the RTD. The witness provided reason for not being able to produce the receipt for the same. Therefore, it is a claim over costs actually expended and the learned judge accepted this part of the evidence of the witness for the plaintiff. In any event, the matter is not in issue as the only issue is as to whether the damages claimed by the plaintiff is too remote. The claim for expenses actually incurred can never be too remote.

In the circumstances, this appeal by the defendant must fail. For that reason, the appeal was dismissed. The decision of the learned sessions judge was affirmed. I order interest on the judgment sum to be paid at the rate of 8% pa from the date of judgment to the date of settlement, and costs to the plaintiff to be taxed.

Appeal dismissed.

Reported by Jamalul Hisham